IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EVA G. ROMPOLA,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
LEHIGH VALLEY HOSPITAL,	:	**No. 03-2993**
Defendant.	:	

MEMORANDUM AND ORDER

Schiller, J. **March 11, 2004**

Plaintiff Eva Rompola brings suit against her former employer, Defendant Lehigh Valley Hospital, for retaliatory discharge in violation of Title VII of the 1964 Civil Rights Act ("Title VII"), 42 U.S.C. § 2000e, and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 629.[1] Presently before the Court is Defendant's motion for summary judgment. For the reasons set forth below, I grant Defendant's motion.

I. BACKGROUND

Plaintiff, a Hungarian-born registered alien, was approximately fifty-one years old when the events relevant to this case occurred. (Rompola Dep. I at 7, 14-15, 79, 110.) After being employed by Lehigh Valley Health Network and Muhlenberg Hospital Center as a part-time employee for a little over one year, (*Id.* at 54, 58-59), Plaintiff applied to transfer to a position as an emergency room trauma nurse at the Lehigh Valley Cedar Crest facility. (*Id.* at 63.) Charlotte Buckenmyer, R.N., Director of Clinical Services at Lehigh Valley Hospital, approved Plaintiff's transfer request and she

[1] On February 17, 2004, Defendant filed its motion for summary judgment on all of the claims in Plaintiff's complaint. On February 19, 2004, Plaintiff voluntarily withdrew all counts in her complaint except for Count IV, alleging retaliatory discharge under Title VII and the ADEA.

began working in the emergency department in April 2000. (*Id.* at 72.) Almost immediately upon beginning her position in the emergency room, Plaintiff began having performance problems. (*Id.*) During her four-week orientation, she requested and was granted extra time to learn how use the computer. (*Id.*) Ms. Buckenmyer noted that at the end of Plaintiff's orientation she was still unable to handle more than two patient assignments at a time, which deviated from the normal load of four patient assignments. (Buckenmyer Dep. at 24-25.) Although Ms. Buckenmyer thought that Plaintiff did not have the organizational or communications skills needed to handle the normal patient load, she allowed Plaintiff to take another four-week orientation program. (*Id.* at 26.)

From August 2000 to November 2001, many of Plaintiff's patients complained about her deficient performance. For example, in August 2000, in an emergency room survey, Plaintiff was criticized for being "incompetent and rude" after a patient had a bad experience when Plaintiff repeatedly attempted to take her blood. (Def.'s Mot. for Summ. J., Ex. G.) This patient stated that Plaintiff "is not suitable for nursing and should be removed from dealing with people." (*Id.*) In September 2000, a mother of a patient complained about Plaintiff's refusal to administer an enema to her infant daughter, stating that Plaintiff instead told the mother to do it herself. (*Id.*, Ex. I.) Another of Plaintiff's patients wrote a complaint when Plaintiff refused to assist the patient with her bed pan and instead scolded her. (*Id.*, Ex. J).

Colleagues also expressed concern with Plaintiff's performance during this time. In August 2000, a colleague wrote to Ms. Buckenmyer regarding Plaintiff's capabilities. (*Id.*, Ex. H) After the co-worker had assessed one of Plaintiff's patients who was having active chest pain, he noted that the patient had been under Plaintiff's care for an hour and she had not performed an EKG or an IV nor initiated laboratory tests. (*Id.*) In December 2000, another co-worker criticized Plaintiff for

failing to follow a physician's orders. (*Id.*, Ex. K.) On June 15, 2001, the Director of Education in Defendant's Department of Emergency Medicine, Dr. Worrilow, sent Ms. Buckenmyer an e-mail stating that he had significant problems working with Plaintiff. In the email, despite stating that he liked Plaintiff personally, Dr. Worrilow provided several examples of Plaintiff's "gross inefficiencies in performance of simple tasks" and concluded that Plaintiff "does not belong in our [Emergency Department]." (*Id.*, Ex. L.) At this time, Plaintiff admittedly had problems identifying the severity of patients' injuries as demonstrated by a documented triage error that she made on July 18, 2001. (Rompola Dep. I at 153.)

On October 9, 2001, Plaintiff received the first of two "Final Warnings" that she received while employed by Defendant. This "Final Warning" was the result of complaints from four patients and several nurses and physicians relating to her performance. (*Id.* at 156-58; Def.'s Mot. for Summ. J., Ex. N.) Subsequently, on October 30, 2001, Plaintiff received a "Confirmation of Counseling" and "Suspension or Final Warning" on her Personnel Report for admitted problems with her attendance. (Def.'s Mot. for Summ. J., Ex. Q.; Rompola Dep. I at 170-71.) In November 2001, Plaintiff again inappropriately triaged two patients (Rompola Dep. I at 171-72; Def.'s Mot. for Summ. J., Ex. P), and on November 25, 2001, another co-worker wrote a memo stating that Plaintiff was "rude and nasty to patients and their family members" as well to the co-worker herself. (Def.'s Mot. for Summ. J., Ex. O.)

Another two incidents lead to Plaintiff's second "Final Warning." On January 4, 2002, Dr. McCarthy complained to Ms. Buckenmyer that Plaintiff had withheld care from a patient because of "personality issues" with the patient. (*Id.*, Ex. T.) Then, on January 9, 2002, Dr. William J. Bromberg, a trauma fellow, accused Plaintiff of administering the wrong medication to a patient. (Rompola Dep.

I at 180-215; Def.'s Mot. for Summ. J., Ex. R.) Based on these incidents, Plaintiff received a second "Final Warning" on January 18, 2002, indicating that if she did not improve her performance, she could be terminated. (Def.'s Mot. for Summ. J., Ex. T.)

At some point during this time, Plaintiff contacted her employee ombudsman because she believed that she was receiving unfair treatment from Ms. Buckenmyer. (Bulishak Dep. at 4-10.) Plaintiff also hired legal counsel who wrote a letter, dated January 18, 2002, to Defendant's attorney claiming that Plaintiff was being victimized by age, gender and national origin discrimination and notifying Defendant that she would be filing a charge with the EEOC. (*Id.* at 2; Compl. ¶18; Def.'s Mot. for Summ. J., Ex. U.) On February 1, 2002, Defendant's attorney responded by denying these allegations. (Pl's Resp. at 2.) On or about March 13, 2002, Plaintiff filed an EEOC Charge of Discrimination alleging discrimination on the basis of sex, age and national origin. (Def.'s Mot. for Summ. J., Ex. W.)

After Plaintiff notified Defendant of her intention to file an EEOC charge, Ms. Buckenmyer granted Plaintiff's voluntary request to change from full-time status to per diem status and to decrease her weekly work hours. This change became effective on February 1, 2002. (Rompola Dep. II at 69-72.) Plaintiff requested per diem status because of the gossip regarding her alleged medication error. (*Id.* at 72.) Although Plaintiff remained on per diem status from February 2002 until her termination in November 2002, beginning on May 26, 2002, she worked forty hours per week. (*Id* at 79.)

After May 26, 2002, Plaintiff was involved in four incidents that Ms. Buckenmyer contends resulted in her termination. (Buckenmyer Dep. at 53-54.) First, on June 21, 2002, a patient and his wife complained about Plaintiff's care, stating the she was "incompetent, confused, scattered and did

not know what she was doing." (Def.'s Mot. for Summ. J., Ex. X.) Second, on July 16, 2002, a patient who had burned herself complained about Plaintiff's treatment. After the patient told Plaintiff that she had already applied ice to the burn, Plaintiff stated that "[w]e do not use ice anymore, we use heat." (*Id.*, Ex. Z.) In her deposition, Plaintiff clarified that she told the patient, who she described as "mouthy," that "we do not use ice anymore. We use warm, [moist] compress." (Rompola Dep. II at 11.) Third, in August 2002, two registration clerks reported an incident in which Plaintiff reacted to a patient's seizure by laughing and inappropriately stating that the patient was "faking." (*Id.* at 14-32; Def. Mot. for Summ. J., Ex. 1.) In her deposition, Plaintiff again clarified that she had said that the patient was "not having real seizures." (Rompola Dep. II at 15-16.) Finally, on October 16, 2002, Plaintiff admittedly made a charting error regarding a patient who had suffered a head injury. Plaintiff mistakenly charted the left pupil size in the right pupil slot and the right pupil size in the left pupil slot. She also mistakenly wrote that the left pupil was "brisk," which means reactive to light, instead of "fixed," which means non-reactive to light. (*Id.* at 32-40.) Despite Ms. Buckenmyer's instruction to correct her error, Plaintiff failed to do so because she "was really busy" and thought that the nurse in charge of the shift would correct it for her. (*Id.* at 40-41.)

On October 25, 2002, Plaintiff was suspended pending an investigation of these incidents. (*Id.* 47-49.) Subsequently, a meeting was held in which Plaintiff was given an opportunity to tell her version of the incidents. (*Id.* 49-50.) At her deposition, Plaintiff maintained her contention that the patient complaints were not valid. She admitted, however, that if they were legitimate, disciplinary action would have been appropriate. (*Id.* at 50-51.) On October 31, 2002, after investigation of the incidents, Ms. Buckenmyer concluded that Plaintiff:

> had opportunities to improve her performance and behavior to meet the expectations of a registered nurse in the emergency department of

> Lehigh Valley Hospital. She has been counseled in the past and received written warnings. A review of her file shows numerous, repeated problems and that despite interventions by management to address these issues, deviations from the standard of practice expected of a RN, and behavior issues continue to occur. In addition, the volume of issues and the pattern of repeatedly committing the same kinds of errors and inappropriate behavior demonstrate either a lack of insight into these issues or simply a refusal to accept responsibility and accountability for her actions. For example, regarding the patient and his wife who stated she was confused and scattered, [Rompola's] response to that was, "they were just mad because they had to wait." Based upon Ms. Rompola's record of performance and behavior issues and her continued failure to perform to the expected standards as demonstrated by these most recent issues, Eva Rompola is terminated from her employment at Lehigh Valley Hospital.

(Def.'s Mot. for Summ. J., Ex. X.) The termination was effective November 1, 2002. On November 15, 2002, Plaintiff filed her second EEOC charge alleging that she was terminated in retaliation for her previously filed EEOC charge. Plaintiff contends that Ms. Buckenmyer failed to investigate or properly investigate the four incidents leading to her termination and that retaliation was the sole reason for her firing. (Rompola Dep. II at 81-85.)

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the initial burden of identifying those portions of the record that it believes illustrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322

(1986). Where the non-moving party has the burden of proof on a particular issue at trial, the moving party meets its burden by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." *Id.* at 325. Once the moving party meets this burden, the non-moving party must offer evidence that establishes a genuine issue of material fact that should proceed to trial. *Id.* at 324; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). In order to meet this burden, the opposing party must point to specific, affirmative evidence in the record and not simply rely on mere allegations, conclusory or vague statements, or general denials in the pleadings. *Celotex*, 477 U.S. at 324. "Such affirmative evidence—regardless of whether it is direct or circumstantial— must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance." *Williams v. Borough of West Chester*, 891 F.2d 458, 460-61 (3d Cir. 1989).

A court may grant summary judgment if the non-moving party fails to make a factual showing "sufficient to establish an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. In making this determination, the non-moving party is entitled to all reasonable inferences. *See Pollock v. Am. Tel. & Tel. Long Lines*, 794 F.2d 860, 864 (3d Cir. 1986). A court may not, however, make credibility determinations or weigh the evidence in making its determination. *See Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000); *see also Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002).

III. DISCUSSION

To establish a prima facie case of retaliation, a plaintiff must show: (1) she engaged in protected activity; (2) she was discharged subsequent to such activity; and (3) a casual link exists between the protected activity and the discharge. *Woodson v. Scott Paper Co.*, 109 F.3d 913, 920 (3d Cir. 1997); *Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1299 (3d Cir. 1997). Generally, "the temporal proximity between the employee's protected activity and the adverse employment action . . . is an obvious method by which a plaintiff can proffer circumstantial evidence 'sufficient to raise the inference that her protected activity was the likely reason for the adverse action.'" *Kachmar v. Sungard Data Sys., Inc.*, 109 F.3d 173, 177 (3d Cir. 1997) (*citing Jalil v. Avdel Corp.*, 873 F.2d 701, 708 (3d Cir. 1989)). Additionally, a plaintiff can come forward with "circumstantial evidence of a 'pattern of antagonism' following the protected conduct [which could] also give rise to the inference [of retaliation]." *Kachmar*, 109 F.3d at 177 (*citing Waddell v. Small Tube Prods., Inc.*, 799 F.2d 69, 73 (3d Cir. 1986)). The mere fact that employers do not halt a previously planned or contemplated action against an employee upon receipt of an EEOC complaint or upon learning that a suit has been filed, however, is not evidence of causality. *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 272 (2001) ("Employers need not suspend previously planned transfers upon discovering that a Title VII suit has been filed, and their proceeding along lines previously contemplated, though not yet definitively determined, is no evidence whatever of causality."); *see also Kachmar,*109 F.3d at 178 ("The element of causation, which necessarily involves an inquiry into the motives of an employer, is highly context-specific."). Similarly, the Third Circuit has counseled that:

> While it is possible that a manager might make a poor evaluation to retaliate against an employee for making an EEOC charge, still it is important that an employer not be dissuaded from making what he believes is an appropriate evaluation by a reason of a fear that the evaluated employee will charge that the evaluation was retaliatory. In this regard, we are well aware that some employees do not recognize

> their deficiencies and thus erroneously may attribute negative evaluations to an employer's prejudice. Accordingly, in a case like this in which the circumstances simply cannot support an inference that the evaluations were related to the EEOC charges, a court should not hesitate to say so.

Shaner v. Synthes, 204 F.3d 494, 505 (3d Cir. 2000).

Once a plaintiff establishes a prima facie case of retaliation, the burden of production shifts to the defendant to "articulate some legitimate, nondiscriminatory reason" for its actions. *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994). "The defendant's burden at this stage is relatively light: it is satisfied if the defendant articulates any legitimate reason for the discharge; the defendant need not prove that the articulated reason actually motivated the discharge." *Woodson*, 109 F.3d at 920 n.2 (*citing Fuentes*, 32 F.3d at 763). If the defendant is successful, "the presumption of discrimination drops from the case." *Id.* A plaintiff, however, may survive summary judgment by discrediting an employer's proffered reason for termination. *Fuentes*, 32 F.3d at 764.

In order to discredit the employer's proffered reason, however, the Third Circuit has held that:

> [T]he plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent. Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence.

Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108-09 (3d Cir. 1997) (*citing Fuentes*, 32 F.3d at 765). As such, "federal courts are not arbitral boards ruling on the strength of 'cause' for discharge. The question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason is [plaintiff's protected activity]." *Id.* (*citing Carson v. Bethlehem Steel Corp.*, 82 F.3d 157, 159 (7th Cir. 1996)). Furthermore, Plaintiff's subjective belief alone cannot rebut

Defendant's reasons for terminating her. *See Momah v. Albert Einstein Med. Ctr.*, 978 F. Supp. 621, 632-33 (E.D. Pa. 1997) (granting summary judgments because "the only evidence that plaintiff's discharge was retaliatory comes from the plaintiff himself" and it did not rebut defendant's proffered reasons), *aff'd*, 229 F.3d 1138 (3d Cir. 2000); *Blanding v. Pa. State Police*, 811 F. Supp. 1084, 1095 (E.D. Pa. 1992) (holding that plaintiff's deposition testimony that he "felt that [defendant's] style of interrogation was a result of [defendant's] feelings of racial prejudice," and plaintiff's claim that defendant "included false facts in [a report] with discriminatory intent," were insufficient to overcome defendants' non-discriminatory reasons for their actions); *see also Akins v. Deptford Township*, No. Civ.A. 92-0610, 1993 WL 147343, at *7 n.2 ; 1993 U.S. Dist. LEXIS 6211, at * 10 n.2 (D.N.J. May 3, 1993) (citing *Blanding*, 811 F. Supp. at 1095), *aff'd*, 995 F.2d 215 (3d Cir. 1993); *cf. Jackson v. Univ. of Pittsburgh*, 826 F.2d 230, 236 (3d Cir. 1987) (holding that plaintiff's deposition testimony contained circumstantial and direct evidence—not simply accusations and speculation—from which factfinder could reasonably infer that defendants' reasons for termination were pretextual).

In this case, Defendant argues that even assuming that Plaintiff can meet the first two elements of a prima facie case of retaliation, she cannot demonstrate a causal link between her protected activity and her termination. In examining the causal element, it is clear that a reasonable factfinder could not find that Plaintiff has established a causal link based on the record. First, the fact that Plaintiff was terminated approximately eight months after her EEOC charge was filed is not "unusually suggestive" of retaliatory motive. *Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 280 (3d Cir. 2000) ("[T]emporal proximity alone will be insufficient to establish the necessary causal connection when the temporal relationship is not 'unusually suggestive,'. . . . Nineteen months was too attenuated to create a genuine issue of fact.") (*citing Krouse v. Am. Sterilizer Co.*, 126 F.3d 494, 503 (3d Cir.

1997)); *see also Woods v. Bentsen*, 889 F. Supp. 179, 187-88 (E.D. Pa. 1995) ("[I]f at least four months pass after the protected action without employer reprisal, no inference of causation is created."); *Shramban v. Aetna*, 262 F. Supp. 2d 531, 539 (E.D. Pa. 2003); *cf. Jalil*, 873 F.2d at 701 (reversing grant of summary judgment because plaintiff established causation for purposes of prima facie case merely by showing discharge occurred only two days after employer received notice of plaintiff's EEOC claim).

Second, Plaintiff's conclusory assertions of retaliatory conduct are entirely unsupported by any evidence in the record. In her response, she states that:

> As soon as [her] counsel notified [Defendant] that she intended to file a charge of age discrimination with the Equal Employment Opportunity Commission and then in particular after [Defendant] was notified officially of the filing of that Charge by the EEOC in late August 2002, [Defendant] began a concerted effort to make the plaintiff's working environment miserable.

(Pl.'s Resp. at 8.) Plaintiff, however, does not provide any affirmative evidence to support this contention. *Williams*, 891 F.2d at 460-61 (stating plaintiff must come forward with affirmative evidence to overcome summary judgment motion).

Third, the only evidence on record that could potentially help support Plaintiff's claims of retaliatory termination is Plaintiff's professed belief that: (1) her termination was retaliatory; and (2) the four incidents for which she was terminated were not appropriately investigated, if they were investigated at all. (Rompola Dep. II at 82-84.) This testimony alone, however, is not sufficient to trigger an inference that her protected activity was the cause for her termination. The record is clear that Plaintiff's employment problems that occurred after notifying Defendant of her intention to file an EEOC charge were consistent with the problems she had before this notification. *Shaner*, 204 F.3d at 504-05 ("In short, the record shows that Shaner's performance evaluations contained similar

criticisms both . . . before and after he filed his first EEOC charge."). For example, on January 18, 2002, the same day Plaintiff's attorney sent the letter to Defendant, Plaintiff received her second "Final Warning" regarding her performance, which cautioned that "immediate improvement should occur in [Plaintiff's] performance . . . . Failure to demonstrate immediate and sustained improvement in performance and/or further breach of department . . . policies may result in further disciplinary action . . . including termination." (Def. Mot. for Summ. J., Ex. T.) Immediately thereafter, Plaintiff voluntarily decreased her hours and notified Defendant of her intention to file an EEOC charge. Plaintiff was not terminated until ten months later, after having been involved in four more incidents of deficient performance. This record does not demonstrate a pattern of antagonism or any inconsistences following the protected activity which would give rise to an inference of retaliation. *See Clark County Sch. Dist.*, 532 U.S. at 272 (holding that no evidence of causality exists where employer follows through with previously planned course of action). Therefore, as Plaintiff has failed to come forward with any circumstantial or direct evidence of retaliatory motive and in light of the record as a whole, summary judgment is appropriate as a reasonable factfinder could not find that a causal link existed between Plaintiff's protected activity and her termination.

Even if Plaintiff could establish a prima facie case of retaliation, summary judgment would nonetheless be appropriate because Plaintiff has also failed to rebut Defendant's legitimate non-discriminatory reason for her termination. Defendant's reasons for terminating Plaintiff are clearly demonstrated from the record as there were numerous complaints about Plaintiff's performance from the beginning of her employment. Prior to the letter notifying Defendant of her intention to file an EEOC charge, Plaintiff had received a least three warnings, two of which were "Final Warnings," about her work performance. (Def.'s Mot. for Summ. J., Ex. N, Q, T.) In her termination letter, Ms.

Buckenmyer cited the four incidents as the basis of her termination and explained in detail that "based upon [Plaintiff's] record of performance and behavior issues and her continued failure to perform to the expected standards as demonstrated by the most recent issues, [Plaintiff was] terminated from her employment." (*Id.*, Ex. X.) Plaintiff does not suggest that these incidents were fabricated and, in fact, admits that patients complained about her. (Rompola Dep. II at 93-94.) Rather, Plaintiff states that she was disciplined for things that were not investigated or not investigated properly and claims that the sole reason was retaliation. This testimony alone, however, is insufficient to demonstrate any factual dispute regarding Defendant's motivation for terminating Plaintiff. *Keller*, 130 F.3d at 1108; *Momah*, 978 F. Supp. at 632-33. Therefore, even assuming Plaintiff could have established her prima facie case and viewing the evidence in the light most favorable to Plaintiff, a reasonable factfinder could not conclude that the termination was motivated by a retaliatory motive.

Finally, the Court would be remiss if it did not note that in the context of the emergency room, where employee's actions are a matter of life and death, employers, such as Defendant, are well within their rights to demand attention to the job, which may not be true, for instance, of a factory setting. Plaintiff's fanciful notions regarding whether or not proper investigation of patients' complaints occurred should not be able to derail or dissuade Defendant from taking disciplinary action, especially in an emergency room setting. The circumstances of this case "simply cannot support an inference that the evaluations were related to the EEOC charges" and this Court does not hesitate to say so. *Shaner*, 204 F.3d at 505. Accordingly, because Plaintiff has not only failed to demonstrate a prima facie case of retaliation but also failed to rebut Defendant's legitimate, non-discriminatory reason for termination, I grant summary judgment.

IV. CONCLUSION

For the foregoing reasons, I grant Defendant's motion for summary judgment. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EVA G. ROMPOLA,	**:**	
Plaintiff,	**:**	**CIVIL ACTION**
	:	
v.	**:**	

LEHIGH VALLEY HOSPITAL,	**:**	**No. 03-2993**
Defendant.	**:**	

ORDER

AND NOW, this **11th** day of **March**, **2004**, upon consideration of Defendant's Motion for Summary Judgment, Plaintiff's response thereto, and Defendant's Reply, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant's Motion for Summary Judgment (Document No. 19) is **GRANTED**.

2. Judgment is entered in favor of Defendant and against Plaintiff.

3. The Clerk of Court is directed to close this case for statistical purposes.

BY THE COURT:

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Berle M. Schiller, J.